

**STATE OF TENNESSEE
DEPARTMENT OF ENVIRONMENT AND CONSERVATION**

IN THE MATTER OF:)	DIVISION OF WATER
)	POLLUTION CONTROL
)	
NATIONAL AMUSEMENT)	
COMPANY, INC.)	
)	
)	
RESPONDENT)	CASE NO. WPC07-0196
)	

DIRECTOR’S ORDER AND ASSESSMENT

NOW COMES Paul E. Davis, Director of the Division of Water Pollution Control, and states:

PARTIES

I.

Paul E. Davis is the duly appointed Director of the Division of Water Pollution Control (hereinafter the “division”) by the Commissioner of the Tennessee Department of Environment and Conservation (hereinafter the “department”).

II.

National Amusement Company, Inc., (hereinafter the “Respondent”) is an active for profit corporation licensed to conduct business in the State of Tennessee and is located at 711 Pansy Hill Road, Harriman, Tennessee, 37748, in Roane county (hereinafter the “site”). Service of process may be made on Respondent through Mr.

Charles A. Clough, Registered Agent, at 711 Pansy Hill Road, Harriman, Tennessee, 37748.

JURISDICTION

III.

Whenever the Commissioner has reason to believe that a violation of Tennessee Code Annotated (T.C.A.) § 69-3-101 *et seq.*, the *Water Quality Control Act*, (hereinafter the “Act”) has occurred, or is about to occur, the Commissioner may issue a complaint to the violator and may order that corrective action be taken, pursuant to T.C.A. § 69-3-109(a) of the Act. Further, the Commissioner has authority to assess civil penalties against any violator of the Act, pursuant to T.C.A. § 69-3-115 of the Act; and has authority to assess damages incurred by the state resulting from the violation, pursuant to T.C.A. § 69-3-116 of the Act. Department Rules governing general water quality criteria and use classifications for surface waters have been promulgated, pursuant to T.C.A. § 69-3-105, and are effective as the *Official Compilation Rules and Regulations of the State of Tennessee*, Chapters 1200-4-3 and 1200-4-4 (hereinafter the “Rules”).

IV.

The Respondent is a “person” as defined at T.C.A. § 69-3-103(20) and, as herein described, has violated the Act.

V.

T.C.A. § 69-3-108 prohibits discharge of pollutants into the waters of the state, except in accordance with the conditions of a valid permit.

VI.

The Emory River, referred to herein, is “waters of the state” as defined by T.C.A. § 69-3-103(33). Pursuant to T.C.A. § 69-3-105(a)(1), all waters of the state have been classified by the Tennessee Water Quality Control Board for suitable uses. Department Rule 1200-4-4, “Use Classifications for Surface Waters”, is contained in the *Official Compilation of Rules and Regulations for the State of Tennessee*. Accordingly, these water bodies have been classified for the following uses: Domestic Water Supply (Supporting), Industrial Water Supply (Supporting), Fish and Aquatic Life (Supporting), Recreation (Supporting), Irrigation (Supporting), Livestock Watering and Wildlife (Supporting).

FACTS

VII.

In December 2005, division personnel received a complaint that the Respondent was allegedly discharging raw sewage from employee restrooms through a pipe to the Emory River. Division personnel contacted the Harriman Utility Board to see if the Respondent had sewer service. Harriman Utility Board informed the division that the Respondent had been billed for sewer service by their water usage as is common with most systems. However, subsequent inspection of the site by Harriman Utility Board

employees revealed that sewage was indeed being discharged through a pipe directly to the Emory River.

VIII.

On December 8, 2005, Mr. Frankie Davis, Superintendent of Water, Gas and Sewer for Harriman Utility Board, provided the division with documentation that this matter was discussed with Mr. Charles A. Clough, registered agent for the Respondent. Mr. Clough was familiar with the issue, and had agreed to correct the problem. With the assistance of Mr. Davis, Mr. Clough was provided with two quotes of \$30,900 and \$22,500 to connect to the Harriman Utility Board sewer service.

IX.

On May 26, 2006, a letter was sent from Mr. Davis, notifying the Respondent of violating the city Sewer Use Ordinance and that corrective action would still be required. Also, the Harriman Utility Board reimbursed the Respondent \$3,847.60 for incorrect sewer service billing. To date, check number 20863, issued by the Harriman Utility Board has not been cashed.

X.

On July 16, 2007, division personnel met with Mr. Davis and Mr. Clough to discuss resolution of the unpermitted discharge of raw sewage. The discharge was sampled at a location where the pipe had broken and sewage was running down the embankment into the Emory River. The laboratory analysis of the discharge showed that

the concentration of Escherichia coli was very high (too numerous to count). At this time, Mr. Clough was advised to cap the pipes and have portable sewage units brought in, within 48 hours, to stop the unpermitted discharge.

XI.

On July 31, 2007, the division issued a Notice of Violation (NOV) to Mr. Clough, describing the findings of the July 16, 2007, inspection. In the NOV, division personnel reiterated that the unpermitted discharge of untreated sewage from the site should cease immediately.

VIOLATIONS

XII.

By discharging pollutants without authorization under a permit, the Respondent has violated T.C.A. §§ 69-3-108(a) and (b) and 69-3-114(b).

T.C.A. §69-3-108(a) states:

- (a) Every person who is or is planning to carry on any of the following activities outlined in subsection (b), other than a person who discharges into a publicly owned treatment works or who is a domestic discharger into a privately owned treatment works, or who is regulated under a general permit as described in subsection (j), shall file an application for a permit with the commissioner or, when necessary, for modification of such person's existing permit.
- (b) It is unlawful for any person, other than a person who discharges into a publicly owned treatment works or a person who is a domestic discharger into a privately owned treatment works, to carry out any of the following activities, except in accordance with the conditions of a valid permit:

- (1) The alteration of the physical, chemical, radiological, biological, or bacteriological properties of any waters of the state;
- (4) The development of a natural resource or the construction, installation, or operation of any establishment or any extension or modification thereof or addition thereto, the operation of which will or is likely to cause an increase in the discharge of wastes into the waters of the state or would otherwise alter the physical, chemical, radiological, biological or bacteriological properties of any waters of the state in any manner not already lawfully authorized;
- (5) The construction or use of any new outlet for the discharge of any wastes into the waters of the state;
- (6) The discharge of sewage, industrial wastes, or other wastes into water, or a location from which it is likely that the discharged substances will move into waters;

T.C.A. § 69-3-114(b) states:

In addition, it is unlawful for any person to act in a manner or degree which is violative of any provision of this part or of any rule, regulation, or standard of water quality promulgated by the board or of any permits or orders issued pursuant to the provisions of this part; or fail or refuse to file an application for a permit as required in § 69-3-108; or to refuse to furnish, or to falsify any records, information, plans, specifications, or other data required by the board or the commissioner under this part.

XIII.

By allowing unpermitted discharges of sewage into waters of the state or to a location where the discharge was likely to enter waters of the state, the Respondent caused a condition of pollution and has violated T.C.A. § 69-3-114.

T.C.A. §69-3-114(a) states:

It is unlawful for any person to discharge any substance into the waters of the state or to place or cause any substance to be placed in any location where such substances, either by themselves or in combination with others, cause any of the damages as defined in § 69-3-103(22), unless such discharge shall be due to an unavoidable accident or unless such action has

been properly authorized. Any such action is declared to be a public nuisance.

ORDER AND ASSESSMENT

XIV.

WHEREFORE, pursuant to the authority vested by T.C.A. §§ 69-3-107, 109, 115-16, I, Paul E. Davis, hereby issue the following ORDER AND ASSESSMENT to the Respondent:

1. As soon as possible, but no later than 7 DAYS of receipt of this Order and Assessment, cap the discharge pipe and provide portable sewage units to stop the unpermitted discharge. The Respondent shall provide written and photographic documentation that the unpermitted discharge was eliminated. Documentation should be sent to the manager of the Division of Water Pollution Control in the Knoxville Environmental Field Office (K-EFO) located at 3711 Middlebrook Pike, Knoxville, TN 37921, and a copy to the manager of the Enforcement and Compliance Section of Water Pollution Control, 6th Floor, L & C Annex, 401 Church Street, Nashville, TN 37243-1534.

2. As soon as possible, but no later than 30 DAYS of receipt of this Order and Assessment, the Respondent shall submit a corrective action plan (CAP) for division's review and approval. The CAP shall propose a permanent solution for disposal of sanitary wastewater from the site. The CAP shall be sent to the manager of the division of Water Pollution Control in the N-EFO and a copy to

the manager of the Enforcement and Compliance Section of Water Pollution Control, at the respective addresses in Item 1.

3. The Respondent shall complete all requirements of this Order and Assessment and be in full compliance with the Act no later than January 31, 2008. Documentation shall be submitted in duplicate to the manager of the Division of Water pollution Control in the N-EFO and to the manager of the Enforcement and Compliance Section of Water Pollution Control at the addresses above.

4. The Respondent is hereby assessed a CIVIL PENALTY in the amount of TWENTY THOUSAND DOLLARS (\$20,000.00), payable as follows:

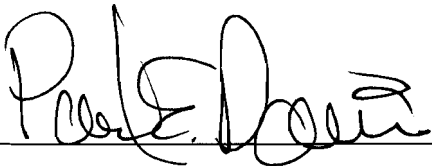
- (a) The Respondent shall, within 30 DAYS of receipt of this Order and Assessment, pay to the division FIVE THOUSAND DOLLARS (\$5,000.00).
- (b) In the event the Respondent fails to comply with Item 1 above, The Respondent shall pay FIVE THOUSAND DOLLARS (\$5,000.00) to the division, to be paid within 30 DAYS of default.
- (c) In the event the Respondent fails to comply with Item 2 above, The Respondent shall pay FIVE THOUSAND DOLLARS (\$5,000.00) to the division, to be paid within 30 DAYS of default.
- (d) In the event the Respondent fails to comply with Item 3 above, The Respondent shall pay FIVE THOUSAND DOLLARS (\$5,000.00) to the division, to be paid within 30 DAYS of default.

5. The Respondent shall otherwise conduct business in accordance with the Act and rules promulgated pursuant to the Act.

The Director of the Division of Water Pollution Control may, for good cause shown, extend the compliance dates contained within this Order and Assessment. In order to be eligible for this time extension, the Respondent shall submit a written request to be received a minimum of 30 days in advance of the compliance date. The request must include sufficient detail to justify such an extension and include at a minimum the anticipated length of the delay, the precise cause or causes of the delay, and all preventive measures taken to minimize the delay. Any such extension will be in writing.

Further, the Respondent is advised that the foregoing Order and Assessment is in no way to be construed as a waiver, expressed or implied, of any provision of the law or regulations. However, compliance with the Order and Assessment will be one factor considered in any decision whether to take enforcement action against the Respondent in the future.

Issued by the Director of the Division of Water Pollution Control on this 24th day of September 2007.

A handwritten signature in black ink, appearing to read "Paul E. Davis", is written over a horizontal line.

PAUL E. DAVIS, P.E.

Director, Division of Water Pollution Control

NOTICE OF RIGHTS

Tennessee Code Annotated §§ 69-3-109 and 69-3-115, allows the Respondent to secure review of this Order and Assessment. In order to secure review of this Order and Assessment, the Respondent must file with the Office of General Council, located at 401 Church Street, L&C Tower 20th Floor, Nashville, TN 37243 a written petition setting forth each of the Respondent's contentions and requesting a hearing before the Water Quality Control Board. The Respondent must file the written petition within thirty (30) days of receiving this Order and Assessment.

If the required written petition is not filed within thirty (30) days of receipt of this Order and Assessment, the Order and Assessment shall become final and will be considered as an agreement to entry of a judgment by consent. Consequently, the Order and Assessment will not be subject to review pursuant to T.C.A. §§ 69-3-109, 115.

Any hearing of this case before the Water Quality Control Board for which a Respondent properly petitions is a contested case hearing governed by T.C.A. § 4-5-301 *et seq.* (the Uniform Administrative Procedures Act) and the Department of State's Uniform Rules of Procedure for Hearing Contested Cases Before State Administrative Agencies. The hearing is in the nature of a trial before the Board sitting with an Administrative Law Judge. The Respondent may subpoena witnesses on its behalf to testify.

If the Respondent is an individual, the Respondent may either obtain legal counsel representation in this matter, both in filing its written petition and in presenting evidence at the hearing, or proceed without an attorney. Low-income individuals may be eligible

for representation at no cost or reduced cost through a local bar association or legal aid organization.

Payment of the civil penalty shall be made payable to “Treasurer, State of Tennessee,” and sent to the Division of Fiscal Services-Consolidated Fees Section, Tennessee Department of Environment and Conservation, 14th Floor L&C Tower, 401 Church Street, Nashville, TN 37243. All other correspondence regarding this matter should be sent to Paul E. Davis, Director, Division of Water Pollution Control, 6th Floor L&C Annex, 401 Church Street, Nashville, TN 37243. All payments and correspondence should include the Respondent’s name and case number as shown on the first page of this Order and Assessment.